

CALIFORNIA ENERGY COMMISSION

Loan Application Announcement

April 2007

3.2 % Interest Rate

Energy Efficiency and Renewable Generation
Emerging Technologies
Agriculture and Food Industries Loan Program

For:

- Food and Fiber Processing
- Animal Feeding and Processing
- Breweries, Wineries, Creameries
- Irrigation Districts
- Agricultural Production



www.energy.ca.gov/process/agriculture/loansolicitation

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Energy Efficiency and Renewable Generation Emerging Technologies Agriculture and Food Industries Loan Program

INTRODUCTION

The California Energy Commission is offering below market rate loan funds for the purchase of proven cost-effective energy efficient and renewable generation emerging technologies applicable to the agricultural and food processing industries.

These emerging technologies include: thermal heat pumps, electrodialysis membrane systems, enterprise energy management systems, heating and cooling topping cycle systems, ultra-low NOx controlled energy efficient burners, solar photo voltaic (PV) and solar thermal systems, utilization of food and animal waste for bio-energy generation.

No other technologies will be considered for this solicitation.

These technologies have been subjected to comprehensive research, development and demonstration efforts under commercial working conditions. These efforts have been funded by the Energy Commission's Public Interest Energy Research Program and the U.S. Department of Energy.

An energy efficient emerging technology is defined as a technology that:

1. Is commercially available
2. Is proven through an independent evaluation to reach new efficiency performance benchmarks when compared to current technologies
3. Has yet to be adopted by no more than 10 percent of the agricultural and food industries in California.

FUNDING

How Much Funding is Available?

The Loan Program has approximately \$3 million available for project financing. The maximum loan amount for any Applicant is \$500,000 to finance a single project or multiple projects. The minimum loan amount for any applicant is \$50,000. Funds are available for the design, purchase and installation of the eligible emerging technology.

What is the Interest Rate and the Life of the Loan?

The interest rate is 3.2 percent. Interest will be calculated as simple interest and the rate will remain fixed during the life of the loan. The maximum repayment term cannot exceed seven years. Interest accrues starting from the date funds are disbursed to the loan recipient.

ELIGIBILITY

Who Is Eligible to Apply?

Only the following types of entities are eligible to apply for funding under this program:

- Food and Fiber Processing
- Animal Feeding and Processing
- Breweries, Wineries, Creameries
- Irrigation Districts
- Agricultural Production

What Projects Qualify for Funding?

Applicants can submit applications for one or more of the targeted emerging technologies. The site where the equipment will be installed must be located in California.



Thermal Heat Pumps
Electrodialysis Membrane System
Enterprise Energy Management Systems
Ultra-low NOx Controlled Energy Efficient Burners
Heating and Cooling Topping Cycle Systems
Solar PV and Solar Thermal Systems
Utilization of Food and Animal Waste for Bio-Energy Generation

Proposed projects must achieve benchmarks described in the Evaluation Criteria Section.

For more details about the targeted emerging technologies please link with abstracts at:
www.energy.ca.gov/process/agriculture/loansolicitation

THE APPLICATION PROCESS

When Do I Apply?

This solicitation is open continuously as long as funds are available. Applications will be accepted and funding will be approved on a first-come, first-served basis. Applications passing the financial and technical evaluations will be recommended for funding.

Apply Now!



Where Do I Submit My Application?

Complete and sign the application form. Send all required information with application to:
California Energy Commission
Grants and Loans Office
Attn: Emerging Energy Efficient Technologies Loan
Demonstration Program
1516 Ninth Street, MS-1
Sacramento, CA 95814-5512



Who Do I Call?

If you wish to discuss project and facility eligibility, funding availability, and application requirements, please contact:

Ricardo Amón
California Energy Commission
(916) 654-4019
ramon@energy.state.ca.us

It is the policy of the Energy Commission not to solicit proposals unless there is a bona fide intention to make awards. However, the Energy Commission reserves the right to reject any or all proposals or to amend, revise and/or cancel the solicitation.

This application is also available on-line at:
www.energy.ca.gov/process/agriculture/loansolicitation

TERMS AND CONDITIONS

What are the Security Requirements?

Securing the loans will require one of the following types of collateral:

- Standby Letter of Credit (a letter of credit is the preferred security)
- Certificate of Deposit (a CD will be considered if applicant is unable to obtain a letter of credit on terms acceptable to the Commission)

The Energy Commission reserves the right to reject any collateral offered. All costs associated with securing the loan, including bank fees, are the responsibility of the applicant.

How Will the Funds be Disbursed?

No loan funds will be disbursed for projects that have been installed or for expenditures incurred prior to approval at an Energy Commission Business Meeting. The Energy Commission will not be liable for any project expenditures and no loan funds will be disbursed unless and until all loan documents are properly executed, including providing acceptable collateral.

Disbursement of loan funds will be made on a reimbursement basis only. Adequate documentation showing incurred expenses must accompany all loan disbursement requests. The Energy Commission reserves the right to request documentation regarding proof of payment and installation of equipment.

What are the Repayment Terms?

The entire principal amount plus accrued interest must be repaid within seven years, without regard to the outcome of the project. Annual loan repayments must be made in accordance with the final amortization schedule which will be calculated and provided after project completion.

Loan recipients may elect June 22 or December 22 as their payment due date. The repayment terms will be contained in the loan agreement, promissory note, and/or security agreement. Other documents may also be required depending upon the specific facts and collateral used for the loan.

What are the Reporting Requirements?

Progress reports are due semi-annually until project completion. A final report is due no later than 60 days after project completion. The final report is used to inform the Commission that the project has been fully installed and the equipment is operational.

A case study report will also be prepared for funded projects. To prepare a case study, the loan recipient will be asked to provide information on the cost of energy, water, labor and other appropriate costs to compare before and after results from the adoption of the chosen emerging technology. The data will be made available to Energy Commission staff or a designee of the Energy Commission who will use this information to produce the case study.

The case study will be made available to the public via Internet or hard copy to further disseminate the benefits of the chosen emerging technology. The loan recipient may be asked to host an “Open House” event to demonstrate the benefits of the emerging technology at the host site.

Is a Project funded by the loan a Public Work? Is Payment of Prevailing Wage Required?

Pursuant to California Labor Code section 1781, the California Energy Commission identifies all projects under this solicitation to be “public works” under the California Labor Code. On public works, all workers from covered trades who work on the project, including the installation of the equipment funded by the loan, must be paid prevailing wage. The California Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR) maintains a list of covered trades/workers that must be paid prevailing wage. The list also includes the prevailing wage that must be paid for the particular worker. The loan agreement will require borrowers to comply with all requirements of the Labor Code applicable to a public works project. Those requirements include paying prevailing wage, keeping payroll records, complying with working hour requirements and apprenticeship obligations.

Specific questions regarding prevailing wage requirements should be directed to DIR at www.dir.ca.gov/dlsr/statistics_research.html or call the DLSR Prevailing Wage Hotline (415) 703-4774. DIR can help you determine if your project will involve workers who are entitled to payment of prevailing wage.

Please visit: www.energy.ca.gov/process/agriculture/loansolicitation for Questions and Answers and other loan documentation details.

CONFIDENTIAL INFORMATION

Income tax returns, financial statements, credit reports obtained and any resulting financial analysis will not be made available to the public. The documents will be held as confidential information at the Energy Commission. With these exclusions, all proposals, loan documents, reports and data resulting from the demonstration will become public documents once project selections are made. Should your application be unsuccessful, the Energy Commission will return or destroy confidential documents.

Except for tax returns and financial statements, applications shall not contain any confidential information. Any material in your application that is marked confidential (other than the exceptions noted above) will be automatically disregarded and returned to you. Your application will be evaluated without such information.

PROJECT SELECTION

How are Loan Applications Evaluated?

Applications will be reviewed to assess both the technical merits of the project and financial strength of the applicant in accordance with the attached Evaluation Criteria form.

Financial Evaluation

Financial strength and credit-worthiness of the applicant will be reviewed for financial eligibility and must pass the minimum requirements listed on the attached Evaluation Criteria form.

Technical Evaluation

- Technical and economic feasibility
- Monitoring and evaluation potential of demonstration project

A Technical Selection Committee will review the applications. The Committee will evaluate each proposal using the following evaluation criteria. Phone or on-site interviews may be conducted as part of this evaluation.

Successful applications will be recommended for funding to the Energy Commission for approval at a public Business Meeting on a first-come, first-served basis.

EVALUATION CRITERIA

<p>Financial Strength</p> <ul style="list-style-type: none"> Current ratio, (current assets/liabilities) Coverage ratio: <u>Times interest earned</u> (earnings before interest and taxes/ interest payment on debt) Debt-to-Equity ratio (debt/equity) <p><i>Must pass two out of three financial strength ratios (above) to qualify.</i></p>	<p>Must be at least 1.125</p> <p>Must be at least 2.4 times</p> <p>Cannot be greater than 1.05</p> <p><i>In addition, applicant must conform to the following requirement:</i></p>
<ul style="list-style-type: none"> Business gross income (from 1040 tax forms) 	<p>Must have positive net income in 1 out of 3 years and/or improvement in net income over time.</p> <p>Proposals that meet the financial criterion will continue to be evaluated.</p>
<p>Emerging Technology</p>	
<ul style="list-style-type: none"> Is the proposed project(s) using one or more of the targeted emerging technologies? 	<p>yes no</p> <p>This question must be answered YES to continue to next criteria</p>
<p>Energy Savings, Efficiency, Peak Reduction, Biopower, Biofuel Production Benchmarks</p>	
<ul style="list-style-type: none"> Thermal heat pump achieves 50% kWh and 20% thermal Btu savings Electrodialysis membrane system achieves 30% kWh savings Enterprise energy management system improves plant energy efficiency by 20% Ultra-low NOx controlled energy efficient boiler achieves 10% Btu savings over unmodified design Heating and cooling topping cycle achieves combined kWh and Thermal Btu savings of 15% Solar PV meets the criteria established by Public Utilities Commission (1) Solar thermal system achieves 60% of Thermal Btu demand (2) Utilization of food and animal waste for bio-energy generation (3) 	<p>yes no</p> <p>yes no</p> <p>yes no</p> <p>yes no</p> <p>yes no</p> <p>yes no</p> <p>yes no</p>
<p>These benchmarks should be used to compare proposed project with existing conventional practices</p>	<p>The applicant's proposed project(s) have to meet the benchmark(s) to continue to the next criteria.</p>

1. Visit: http://www.gosolarcalifornia.ca.gov/csi/performance_based.html

2. Any technology that does not comply with the expected performance benchmark will have to be judged by an Energy Commission technical reviewer. The burden of proof is on the applicant.

3. Anaerobic digestion or fermentation achieves CHP efficiency of 30% for ligno-cellulosic biomass and 60% for starch and sugar based biomass.

Economic Payback	
<ul style="list-style-type: none"> Does the project achieve simple payback of no more than 7 years—(total project cost/total project savings) <p>Project costs only include cost of the loan. Project benefits include all energy savings (kWh, kW, NG, and fuels); all kWh produced by solar PV or Btu units saved by thermal system; other cost reductions (productivity gains) that can be attributed to the project installation.</p>	<p>yes no</p> <p>This question must be answered YES to continue to next criteria</p>
Strength of Project Applicant and Technology Transfer Potential	SCORE
<ul style="list-style-type: none"> Project plan must include: <p>Equipment to be installed; implementation schedule; completion date; calculations of energy savings/efficiency improvements that compare existing practices with new technology; calculations that show how new technology will achieve minimum benchmark for chosen technology.</p> <p>Description of available data that can be collected to evaluate the project before and after installation.</p> <p>Commitment to give access to site to collect energy data and ability to participate in on-site educational presentation at the completion of the project.</p>	<p>0 Not responsive</p> <p>1–2 Response is minimal</p> <p>3–4 Responds only marginally to relevant considerations</p> <p>5–6 Responds satisfactorily to most relevant considerations</p> <p>7–8 Responds satisfactorily to all relevant considerations</p> <p>9 Responds completely, accurately, and convincingly to all relevant considerations</p> <p>10 Response is complete, specific and superior, both quantitatively and qualitatively</p> <p>Must SCORE no less than 9 to be recommended for funding</p>

Proposals that pass the final criteria will be recommended for funding to the California Energy Commission.

APPLICATION FOR ENERGY COMMISSION

1. APPLICANT INFORMATION

Applicant's Legal Name:		
Mailing Address:	City:	Zip:
Street Address:	City:	Zip:
County:		
Contact Person:	Title:	
E-mail:	Phone:	Fax:

2. PROJECT DETAILS

 **Your Loan Demonstration Project Application Must Include the Following Items:**

Please submit written response answering each item below for one or more emerging technology project(s) you are applying for.

1. Description of your operation, energy use data, and energy sources (electric, natural gas, propane and/or diesel, utility provider).
2. Detailed project description **with** calculations to prove the proposed emerging technology will achieve energy savings, peak load reduction and/or shift load to off-peak periods. The project description should include project objectives, proposed equipment to be installed and the environmental benefits resulting from the installation of this project. Provide analysis with the assumptions used to calculate energy benefits comparing the current conventional practices with the new technology installation.
3. Describe how suitable the project site is for monitoring and evaluation of project results. Describe status of business records available and project evaluation potential (items to consider include: Is data available for before and after project evaluation? Can your site support a side-by-side monitoring and evaluation comparison? Are there any major up-coming changes planned for your operation or production?).

3. PROJECT SCHEDULE

Tentative project start date:
Tentative project completion date (should be no later than March 31, 2009):

4. PROJECT BUDGET and SCHEDULE

Project Item	Performed by	Estimated Completion Date	Cost
Project Design			
Project Installation			
Equipment and Materials			
Miscellaneous			
Total Project Cost			
Requested Loan Amount			

Check desired loan repayment date:	<input type="checkbox"/> June 22 nd <input type="checkbox"/> December 22 nd
Check intended type of collateral to be used:	<input type="checkbox"/> Letter of Credit <input type="checkbox"/> Certificate of Deposit

5. PROJECT ENERGY SAVINGS AND PAYBACK

For each emerging technology applied for in your application, fill out one section below and include the appropriate savings/production estimates along with the associated dollar value.

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

Emerging Technology: _____ # of Units: _____

	Savings/Production	\$ Value
Total Annual Electric Savings:	_____ kWh	\$ _____
Total Annual Natural Gas Savings:	_____ therms	\$ _____
Total Peak Demand Reduction:	_____ kW	\$ _____
Total Power Produced:	_____ kW	\$ _____

**A. TOTAL SAVINGS/PRODUCTION \$ VALUE
OF ALL TECHNOLOGIES:**

\$
\$

B. TOTAL PROJECT COSTS:

SIMPLE PAYBACK (B divided by A): _____ years

6. OTHER APPLICATION INFORMATION

Your Application Package Must Also Include:

1. **Signed Federal income tax returns** (for the past three years, including Schedule "F").
2. **Financial statements** (CPA-prepared for the past three years, including balance sheet, income statement, and any other attachments).
3. **Applicant's bank name, address, phone number, type of account and servicing officer.**
4. **Type of ownership or management:**
 - **Sole Proprietor** (supply a copy of fictitious name filing and social security number)
 - **Partnership** (supply a copy of partnership agreement and name, address, and social security number of all general partners)
 - **Corporation** (supply a copy of Articles of Incorporation)
 - **Limited Liability Company** (supply a copy of Articles of Organization and name, address, and Social Security numbers of all managers of the LLC)
5. **Applicant Statement Regarding Prevailing Wages. Check one of the following:**
 - _____ Applicant agrees the project is a public work and prevailing wages will be paid.
 - _____ Project is not a public work and prevailing wages will not be paid. Attached is written determination by the Department of Industrial Relations (DIR) that the project is not a public work. If applicant does not provide a copy of the DIR determination, the application is considered incomplete and will be returned to the applicant.

Note: Certain business entities such as corporations, limited partnerships/limited liability companies may be required to register and be in good standing with the California Secretary of State to be eligible to enter into a loan agreement with the Energy Commission. If you are not registered with the California Secretary of State, we encourage you to contact the Secretary of State's Office as soon as possible to avoid potential delays in beginning your project, should you be awarded a loan.

For more information contact the California Secretary of State's Office at www.ss.ca.gov, or call (916) 657-5448.

7. CERTIFICATION

To the best of my knowledge and belief, the information contained in this Application is correct and complete. I also authorize the Energy Commission or an authorized designee of the Energy Commission to obtain and review a credit report.

Name of Authorized Representative:		
Title:		
Signature of Authorized Representative:		
Date:	Phone:	Fax:

Note: The authorized representative should be the President, Owner, General Partner or authorized designee (by original signed letter).

Arnold Schwarzenegger
Governor



California Energy Commission

Jackalyne Pfannenstiel
Chairman

James D. Boyd
Vice Chair

Commissioners
Arthur H. Rosenfeld, Ph.D.
John L. Geesman
Jeffrey Byron

B. B. Blevins
Executive Director

April 2007



California Energy Commission

Emerging Energy Technologies

Thermal Heat Pumps (THP)

This new high efficiency thermally driven heat pump can produce hot water at 140° F and cold water at 40° F. The unit operates on the ammonia absorption cycle and incorporates internal regenerative heat exchangers achieving higher energy efficiencies. Monitored operation of the new heat pump at a poultry processing plant demonstrated up to 68% savings in electrical energy and 27% savings in thermal energy compared to the conventional practice.



Energy Savings:

48,600 therms and 272,000 kWh per year for a 100 ton unit operating 4,000 hours

Benefit:

More than \$75,800 in energy savings per year

Contact:

Reta L. Ward
Energy Concepts Company
(410) 266-6521
Enerconcep@aol.com
www.energy-concepts.com

Electrodialysis Membrane Systems

Electrodialysis is an electrically driven membrane process that separates ionized solutes from aqueous solutions. The process promotes tartrate stabilization in wines preventing tartrates from precipitating during storage. Cold storage involves cooling wine to about 28° F holding it in insulated tanks for periods of several days to weeks. The energy consumption of cold stabilization process is conservatively estimated at about 70 kilowatt-hours (kWh) per 1,000 gallons (kgal). Electrodialysis uses about 12 kWh per kgal of wine



Energy Savings:

139,200 kWh per year for a 600 gal/hour unit operating 4,000 hours

Benefit:

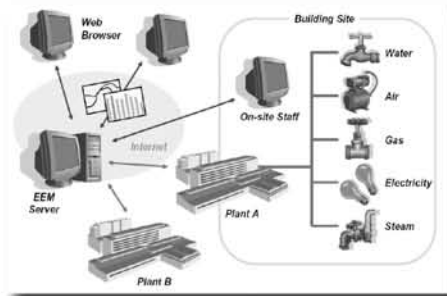
More than \$13,200 in energy savings per year

Contact:

Eric Dahlberg, President
Winesecrets
(707) 255-9107
info@winesecrets.com

Enterprise Energy Management (EEM) Systems

Enterprise Energy Management Systems integrate the use of software, data acquisition hardware, and communication systems to collect, analyze and display information from energy assets and other process equipment. Managers can make optimization decisions to reduce energy use that translate into cost savings. EEM systems track key energy management functions such as organizing energy use data, identifying energy consumption anomalies, managing energy costs, and automating demand response strategies.



Energy Savings:

Are site specific.

Benefits:

Optimize performance, reduce waste, lower CO₂ emissions, lower cost of production

Contact:

Aime T. Mckane
Lawrence Berkeley National Laboratory
atmckane@lbl.gov

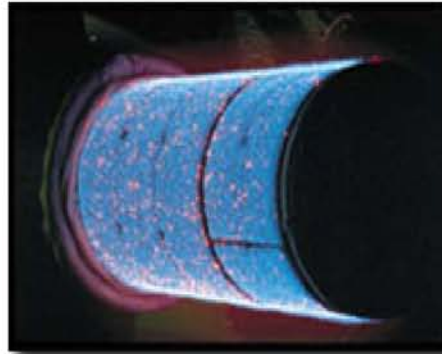


California Energy Commission

Emerging Energy Technologies

Low NOX Controlled Energy Efficient Boilers

Cooling the flame by adding excess ambient air (EA) and flue gas recirculation (FGR) are the two methods to achieve ultra low NOX emissions from boilers. FGR is preferred due to high thermal efficiency while EA uses less electrical energy. A new hybrid EA-FGR control technology combines the best features of the two approaches. Overall energy costs are lower compared to either strict EA or FGR only operation.

**Energy Savings:**

36,120 kWh for a 600 hp boiler operating 800 hours. Although, thermal energy increased by 160 million Btu, net energy savings was 210 million Btu equivalents.

Benefit:

\$2,700 in energy savings per year

Contact:

Alzeta Corporation
(800) 676-8281, ext. 349
jsullivan@alzeta.com
www.alzeta.com

Integrated Heating and Cooling Topping Cycle

This new integrated heating and cooling topping cycle concept is an optimal strategy to reduce electrical power consumption. It involves a high-pressure steam turbine driven refrigeration system for cooling and low-pressure exhaust steam for heating. The pilot installation reduced electrical power consumption by 104 kW during the peak season and 46 kW during the off-peak season.

**Energy Savings:**

540,000 kWh per year for a 86 hp steam turbine coupled to a chiller

Benefit:

More than \$45,000 in energy savings per year

Contact:

Riyaz Papar, Director
Hudson Technologies
Company
(281) 298-0975
rpapar@hudsontech.com

Solar Thermal Systems

Parabolic-trough collectors use mirrored surfaces curved in a linearly extended parabolic shape to focus sunlight on a dark surfaced absorber tube running the length of the trough. A heat transfer fluid is pumped through the absorber tube to pick up the solar heat. Parabolic-trough systems use single-axis tracking systems to keep them facing the sun.

**Energy Production:**

200,000 to 350,000 Btu per square foot per year

Benefits:

Substitute's renewable energy for electricity or fossil-fuels, lower NOx and CO2 emissions.

Contact:

Pramod Kulkarni
California Energy Commission
(916) 654-4637
pkulkarni@energy.state.ca.us

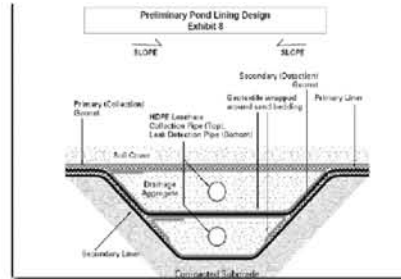


California Energy Commission

Emerging Energy Technologies

Agricultural and Food Waste for Biopower and Biofuel Generation

The Anaerobic Digester Project is an economically feasible solution to energy and waste issues facing food processors by collecting and utilizing anaerobic digester biogas to economically produce electricity and heat. Biogas is collected by anaerobic digestion of organic wastes to fuel a micro turbine equipped with a heat exchanger. Thus, the waste heat captured is used to supplement the facility's heat requirement and it can be used to heat the digester influent.



Energy Production:
20,000-25,000 Therms/year

Benefits:

Reduced waste disposal costs, capture of methane greenhouse gases, improved waste management practices

Contact:

Jessica Zhang
California Energy Commission
(916) 654-4063
zzhang@energy.state.ca.us

If you would like to discuss project and facility eligibility, funding availability, and application requirements, please contact:

Ricardo Amón
California Energy Commission
(916) 654-4019
ramon@energy.state.ca.us

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



**Energy Efficiency and Renewable Generation
Emerging Technologies
Agriculture and Food Industries Loan Program**

**Prevailing Wage Compliance Q&A
April 2007**

1. Is payment of prevailing wage required?

Yes. Projects under this solicitation have been identified by the California Energy Commission as public works subject to the requirements of the California Labor Code. Payment of prevailing wage is required for public works projects.

2. Does prevailing wage apply to private entities?

Yes. A private entity will be required to pay prevailing wage under California law for a project that is a public work.

3. How do I know if my project is a public work?

The California Labor Code beginning at section 1720 deals with this issue. Labor Code sections 1720 and 1771 define public works as work done under contract and paid for in whole or in part out of public funds that involves one or more of the following:

- Construction (includes work performed during the design and preconstruction phases of construction including but not limited to inspection and land surveying work)
- Alteration
- Demolition
- Installation
- Repair work
- Maintenance work

The Labor Code can be found at: <http://www.leginfo.ca.gov/calaw.html>.

Below are some examples of the types of activities that typically lead to finding that a project is a public work:

- Electrical work such as wiring
- Carpentry work
- Cement work such as pouring a cement pad
- Site preparation such as grading
- Surveying

For purposes of the loans made under this solicitation, projects will be considered public works. The only exception to this is described in the answer to question 11 below.

4. What kind of trades or workers must be paid prevailing wage?

The California Department of Industrial Relations (DIR) Division of Labor Statistics and Research (DLSR) make the final determination on which trades and/or workers are covered by prevailing wage laws. DLSR maintains a list of the covered trades/workers that are entitled to prevailing wage for public works commercial construction projects. See www.dir.ca.gov/dlsr/statistics_research.html or call the DLSR Prevailing Wage Hotline (415) 703-4774 for more information about these trades.

Generally, workers such as the following would be covered trades:

- Operating engineer (heavy equipment operator)
- Surveyor
- Carpenter
- Cement Mason
- Electrician
- Laborer

The following types of workers usually would NOT be covered trades entitled to prevailing wage:

- Engineer
- Project Superintendent/Construction Manager/Project Manager
- Architect
- Planner
- Computer Programmer

Workers who are used to install equipment financed by this loan must be paid prevailing wage if DLSR has an established prevailing wage rate determination for that type of worker.

The above examples are for general information only. If you have any questions about whether a worker is in a covered trade requiring payment of prevailing wages, you should check directly with DIR.

5. How do I know what prevailing wage rates are required?

DLSR determines the prevailing wage rate for workers in covered trades. These rates are classified by location of the project, type of worker (journeyman or apprentice) and time worked (regular pay, holiday, overtime, etc.). For prevailing wage rate information for commercial projects, see www.dir.ca.gov/dlsr/statistics_research.html or call the Prevailing Wage Hotline (415) 703-4774. If your project involves residential

construction, the rates are not listed on DIR's website, and you must call the DLSR Prevailing Wage Hotline.

6. Can I include installation costs in the amount to be financed by the loan? Can costs to pay prevailing wage be included in the amount to be financed?

Yes. The amount financed by the loan can include equipment, installation and any construction type work to prepare the equipment for installation (for example, pouring a cement pad, bolting the equipment to the pad, hardwiring the equipment into the building, etc.).

7. What should I do if workers in construction type trades will be used to install the equipment, but they do not fit neatly into one of the categories on the DIR website?

Contact DLSR and describe the type of trade you anticipate will be required in your project and ask whether there is an existing prevailing wage rate already set by DLSR.

8. Does prevailing wage apply to a public entity that performs project work with its own employees?

No.

9. Are there any special requirements in the loan agreement to comply with prevailing wage laws?

Yes. The borrower must make sure that covered workers are paid prevailing wage. There are other Labor Code requirements also, such as keeping payroll records, complying with working hour requirements, and apprenticeship obligations. See the sample Loan Documents located at:

www.energy.ca.gov/process/agriculture/loansolicitation

If you have questions about these additional Labor Code requirements, you should contact DIR: www.dir.ca.gov/dlsr/statistics_research.html

10. What if installation of the equipment financed by the loan will not include any covered workers that DLSR requires to be paid prevailing wage?

Unless you receive a written determination from DIR that the project is not a public work (see next question below), the loan agreement will include the requirement that prevailing wage must be paid and borrower must comply with related laws. However,

this requirement in the loan agreement would simply not apply to a project that does not use any workers who are entitled to be paid prevailing wage.

11. What if I believe that my project is not a public work? Is there a way to determine that my project is or is not a public work?

Yes. You can write to the Director of DIR for a coverage determination on whether your project is a public work requiring the payment of prevailing wage. You would include all the relevant facts and documents related to the project. DIR regulations, Title 8 California Code of Regulations, section 16001(a)(1), provides that any interested party may file a request with the Director of DIR to determine coverage under the prevailing wage laws. The request can be either for a specific project or type of work to be performed that the interested party believes may be subject to or excluded from coverage as public works under the Labor Code. The full text of DIR's regulations can be found at: <http://ccr.oal.ca.gov>, (Title 8, Division 1, Chapter 8, Subchapter 3, Article 2).

Send requests for a coverage determination to:

Department of Industrial Relations
Office of the Director
455 Golden Gate Avenue
San Francisco, CA 94102

If DIR issues a written determination pursuant to DIR's regulations (Title 8 California Code of Regulations section 16001), that the project is not a public work, then payment of prevailing wages or compliance with the other Labor Code sections connected with public works would not be required. Keep in mind that if you request a coverage determination from DIR, we cannot predict how long it will take to receive the determination. Since this solicitation is on a first-come first-served basis, funds may not be available if all loan funds are loaned prior to you receiving a DIR determination. If you decide to request a determination from DIR, you should not submit your loan application until you have received the written determination from DIR. If you do receive a written determination from DIR that the project is not a public work, check the box on the application that indicates your project is not a public work and prevailing wages will not be paid. Be sure to attach a copy of the written DIR determination with your application. In this case, the Energy Commission will remove the prevailing wage requirement from the loan agreement.

CALIFORNIA ENERGY COMMISSION
ENERGY EFFICIENCY AND RENEWABLE GENERATION EMERGING TECHNOLOGIES
AGRICULTURE AND FOOD INDUSTRIES LOAN PROGRAM

LOAN AGREEMENT

LOAN NUMBER: _____

PRINCIPAL AMOUNT: _____

PROJECT TERM: _____

This Loan Agreement (the “Agreement”) is entered into as of the Effective Date, between the State Energy Resources Conservation and Development Commission (the “Energy Commission”) and _____, a _____ (“Borrower”) located in _____, California.

1. STATUTORY AUTHORITY AND LOAN

- A. Pursuant to the purposes authorized by section 25650 of the California Public Resources Code (the “Agricultural Industry Energy Program” or “Program”), the Energy Commission has approved Borrower’s loan application dated _____, which is not attached but is expressly incorporated by reference herein. The Energy Commission’s approval of Borrower’s loan application and the extension of credit under this Agreement are made on reliance of the truth and accuracy of the loan application, budget and other supporting documents provided by Borrower to the Energy Commission, which by executing this Agreement the Borrower represents under penalty of perjury are true and accurate in all respects.
- B. Subject to the terms, covenants, and conditions contained herein, and the Budget attached as Exhibit D hereto (the “Budget”) to the extent it modifies Borrower’s loan application, the Energy Commission agrees to make a loan to Borrower (the “Loan”) in the amount of _____ Dollars (\$_____), evidenced by a Promissory Note (the “Promissory Note”) for loan number _____ attached hereto as Exhibit A. In consideration for, and as an inducement to, the extension of credit under this Agreement, the Borrower agrees to provide the following collateral: _____ [*letter of credit*] [*certificate of deposit*] The Loan Agreement, Promissory Note, Work Statement, Budget, as well as the Security Agreement and Assignment of Certificate of Deposit, if applicable, together are referred to as the Loan Documents (“Loan Documents”).

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in the attached Work Statement and Budget (the "Project"). Any other use of funds disbursed hereunder shall require prior written approval by the Energy Commission.

3. LOAN DISBURSEMENT SCHEDULE

- A. Borrower shall be eligible to receive disbursement of funds by the Energy Commission upon Borrower's execution and delivery of the attached Promissory Note and any appropriate security instruments and required supplemental documents, including invoices as required in this section.
- B. Loan funds shall be disbursed on a reimbursement basis upon the Energy Commission's receipt of invoices submitted by Borrower. Borrower may invoice the Energy Commission for expenses after Borrower has received an invoice from a vendor or supplier for equipment or purchases that will be paid with Loan funds. Energy Commission staff will approve invoices only after verifying requested amounts against backup invoices to Borrower from vendors/suppliers and determining that expenses are appropriate and used for the authorized purposes for this Loan. A purchase order issued by Borrower to a vendor/supplier is not appropriate documentation for disbursement of Loan Funds. All expenditures must be incurred during the approved Project Term in order to be eligible for reimbursement. Expenditures incurred prior to the approved Project Term of this Agreement will not be reimbursed.
- C. All invoices must be submitted within sixty (60) days after Project completion.

4. LOAN REPAYMENT AND INTEREST

All Loan funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Energy Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of the annual scheduled Loan repayment installment to the Energy Commission, and interest shall accrue from the time of disbursement of Loan funds to the Borrower until receipt of full Loan repayment to the Energy Commission.

5. EFFECTIVE DATE OF AGREEMENT

- A. This Agreement shall become effective on the date it is approved and executed by the Energy Commission in Sacramento, California (the "Effective Date").

- B. The Borrower agrees to complete performance of its obligations under the Loan Documents within the time periods required by the Loan Documents and any fully executed amendments to the Loan Documents, if applicable.

6. PREPAYMENT

Borrower shall have the right to prepay all or any part of the outstanding balance of this Loan at any time without penalty. Any partial prepayment will not excuse any later scheduled payments until the Loan is paid in full. Prepayments shall be applied first to the payment of any outstanding late fees, then to interest and then to principal installments.

7. PROMISSORY NOTE

In order to evidence its debt to the Energy Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Energy Commission the Promissory Note (attached as Exhibit A hereto).

8. ACCOUNTS

- A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained, and is subject to review and audit by the Energy Commission, as long as the Loan obligation remains unsatisfied.
- B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after the date the Energy Commission determines this Loan is repaid in full.
- C. The Borrower further agrees to allow the Energy Commission or any other agency of the State of California (the "State") or the federal government, or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all books and records that pertain to the Loan account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Energy Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for no less than three years after the date the Energy Commission determines this Loan is repaid in full, unless the Energy Commission notifies the Borrower prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. OPERATION OF PROJECT

- A. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and

shall ensure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and, in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the written approval of the Energy Commission, may use the insurance proceeds to install alternate projects.

- B. The Borrower agrees to provide the Energy Commission with information necessary for administration of the Program for one year following completion of the Project. The necessary information includes, at a minimum, the following: (1) the annual computation of energy and other cost savings for the most recent fiscal year, calculated in the manner prescribed by the Energy Commission; and (2) any information or change in assumptions or operations which might affect the Energy Commission's initial determination of energy or other savings.
- C. The Borrower authorizes any official or agent of the Energy Commission or the State to conduct physical inspections of the Project before the commencement of the Project, and at any time prior to the final repayment of the Loan. In each contract entered into with suppliers of goods and services to install, conduct, or operate the Project, including management services, the Borrower shall include terms which allow any officer or agent of the Energy Commission or the State access to the Project site and to any books, documents, or records related to the Project.
- D. If, prior to final repayment of the Loan, the Borrower sells the equipment or material acquired and/or installed with the proceeds of the Loan, or transfers or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the proceeds of any transfer or sale to repayment in full of any remaining unpaid principal balance, along with accrued interest and late fees, due under this Agreement at the time of repayment. The Borrower shall notify the Energy Commission within five business days of the date on which the Borrower enters into an agreement for such transfer or sale. The Borrower shall tender full payment to the Energy Commission within 30 calendar days of the date any such transfer or sale becomes final.
- E. The Energy Commission may request that Borrower host an open house at a host site to demonstrate the benefits of the technology funded by the Loan to target an audience interested in learning about energy efficiency advances in the industrial sector.

10. DEFAULT

- A. The Borrower's failure to comply with any of the terms of the Loan Documents shall constitute a breach of this Agreement and an Event of Default. In the event of any default, the Energy Commission may, in its discretion, declare this Agreement to have been breached and be released from any further performance

hereunder. Events of default are detailed in the Promissory Note and are incorporated herein by reference.

- B. In the event of any default or breach of this Agreement by the Borrower, the Energy Commission, without limiting any of its other legal rights or remedies, may accelerate the Loan and declare any remaining unpaid principal balance, along with accrued interest and late fees, immediately due and payable, as provided in the Promissory Note evidencing this Loan.

11. REPORTING

- A. A final report is due no later than 60 days after Project completion. The final report is used to inform the Energy Commission that the Project has been fully installed and the equipment is or will be operational at the start of the production season.
- B. Progress reports are due semi-annually until Project completion. Reports are due January 31st (for the July 1 – December 31 period) and July 31st for the January 1 – June 30 period).
- C. If requested by the Energy Commission, Borrower shall submit, within ten (10) days after the Energy Commission's written request, a status report on its activities to date, pursuant to this Agreement.
- D. Reports shall be in a format as determined by the Energy Commission.

12. LETTER OF CREDIT

If Borrower has provided a letter of credit ("Letter of Credit"), this paragraph applies. In consideration for, and as an inducement to, the extension of credit under this Agreement, the Borrower agrees to provide to the Energy Commission a Letter of Credit. Borrower shall provide to the Energy Commission an irrevocable, unconditional, non-transferable standby Letter of Credit in the amount of \$_____ from _____ [bank], a nationally or state chartered, FDIC-insured financial institution. This Letter of Credit shall be provided in a form and on terms designated and/or approved by the Energy Commission. Pursuant to California Commercial Code section 5102(a)(3), the Energy Commission shall be named as beneficiary of the Letter of Credit. The Letter of Credit required by this paragraph is a condition precedent to making the Loan, and is relied upon by the Energy Commission in extending credit to the Borrower. The Letter of Credit requirement shall be in force on a continuing basis throughout the term of the Loan until the Loan is repaid in full.

13. CERTIFICATE OF DEPOSIT

If Borrower has provided a certificate of deposit ("Certificate of Deposit"), this paragraph applies. In consideration for, and as an inducement to, the extension of credit under this

Agreement, the Borrower agrees to assign to the Energy Commission all of its right, title and interest in a Certificate of Deposit. Borrower shall assign to the Energy Commission all of its right, title and interest in a Certificate of Deposit in the amount of \$_____, including any earned interest, from ____ *[bank]*, a nationally or state chartered, FDIC-insured financial institution. Borrower has executed a Security Agreement and Assignment of Certificate of Deposit, which evidences the Energy Commission's security interest in Borrower's Certificate of Deposit as collateral for the Loan. The Certificate of Deposit required by this paragraph is a condition precedent to making the Loan, and is relied upon by the Energy Commission in extending credit to the Borrower. The Certificate of Deposit requirement shall be in force on a continuing basis throughout the term of the Loan until the Loan is repaid in full.

14. PUBLIC WORK AND PAYMENT OF PREVAILING WAGE

For purposes of this Agreement, the Project is identified as a "public work" as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720, including section 1781 thereof. Projects that are "public works" must ensure that all covered workers are paid prevailing wages pursuant to California Labor Code section 1771.

A. Borrower/General Requirements

1. Borrower shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work performed on the Project funded by this Agreement. For purpose of compliance with prevailing wage law, Borrower shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.
2. Borrower shall certify to the Energy Commission on each invoice, that prevailing wages were paid to eligible workers who provided labor for work covered by the invoice and that the Borrower and all contractors complied with prevailing wage laws.

B. Flowdown Requirements

Borrower shall ensure that all agreements with contractors for construction, alteration, demolition, installation, repair or maintenance work for the Project contain the following provisions:

1. Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work performed under the contract. Contractor's obligations under prevailing wage laws include without limitation: pay not less than the applicable prevailing wage for public works activities performed on the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.
2. Contractor shall ensure that the above requirements are included in all subcontracts for construction, alteration, demolition, installation, repair or maintenance work for the Project.

15. GENERAL TERMS

A. Indemnification by Borrower

The Borrower agrees to indemnify, defend, and save harmless the Energy Commission and the State and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with the Loan or this Agreement, or the financing or the operation of the Project financed with the Loan.

B. Ownership of Equipment and Material

All equipment and material acquired under this Agreement shall become the property of the Borrower at time of acquisition or purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project.

C. Independent Capacity

The Borrower, and the agents and employees of Borrower, in the performance of this Agreement, shall and do act in an independent capacity, and they acknowledge and agree that they are not officers or employees or agents of the Energy Commission or the State of California and accordingly they are not authorized to act, and may not act, in such capacity.

D. Assignment

Without the written consent of the Energy Commission, this Agreement is not assignable or transferable by Borrower either in whole or in part. The Energy Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Agreement shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.

E. Time of the Essence

Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion the purpose for which this Loan was awarded. The Energy Commission Project Manager will periodically evaluate the progress toward completion.

F. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

G. Severability

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement continue to have force and effect and shall not be affected thereby.

H. Governing Law and Venue

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County. In any contest arising under the Loan Documents, the Energy Commission and the Borrower agree to waive a trial by jury.

I. Non-discrimination

During the performance of this Agreement, Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of age (40 and over), ancestry, color, religious creed, disability (mental and physical) including HIV and AIDS, marital status, medical condition (cancer and genetic characteristics), national origin, race, sex, sexual orientation, family care leave, nor any other classification protected under state or federal law. Borrower and its contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder

(California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. Incorporation of Public Resources Code

Public Resources Codes section 25650, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.

K. Borrower Authorization

The Borrower certifies that it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges that the resolution of its governing body or other official action authorizing it to enter into this Agreement also authorizes such further acts as are necessary, including execution of the Promissory Note as well as Security Agreement and Assignment of Certificate of Deposit, if applicable, to implement and further the intent of this Agreement.

16. NOTICE

Any notice required to be given to the Energy Commission hereunder shall be sent to the Energy Commission at 1516 Ninth Street, MS-1, Sacramento, California 95814, attention Grants and Loans Office Manager, or at such other address as the Energy Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown below the Borrower's execution of this Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. Notice shall be effective when received, unless otherwise stated in the Loan Documents or unless a legal holiday for the State commences on the date of the attempted delivery in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

IN WITNESS WHEREOF, this Loan Agreement has been executed by the parties hereto.

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION

BORROWER (If other than an individual, state
whether a corporation, partnership, etc.)

NAME OF BORROWER

John P. Butler II, SSM-I

PRINTED NAME OF AUTHORIZED SIGNATURE

PRINTED NAME OF AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Manager, Grants and Loans Office

TITLE

TITLE

DATE

DATE

MAILING ADDRESS:

AMOUNT ENCUMBERED \$	FISCAL YEAR	FUND Program	LOAN NO.
APPROPRIATION ORG.			LINE ITEM ALLOTMENT
APPROPRIATION AUG			LINE ITEM ALLOTMENT
I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.			
SIGNATURE OF ACCOUNTING OFFICER			DATE

EXHIBIT A

PROMISSORY NOTE

LOAN NUMBER: _____

PRINCIPAL AMOUNT: _____

INTEREST RATE: _____

1. For value received, the undersigned, (hereinafter referred to as the “Borrower”), promises to pay to the order of the State Energy Resources Conservation and Development Commission (hereinafter referred to as the “Energy Commission”), at its principal place of business at 1516 Ninth Street, Sacramento, California 95814, or at such other place as the Energy Commission may designate, the principal sum of _____ Dollars (\$_____) or such lesser amount as shall equal the aggregate amount disbursed to the Borrower by the Energy Commission pursuant to the Loan Documents between the Borrower and the Energy Commission, together with interest thereon at the rate of ____ percent per annum on the unpaid principal balance, computed from the date of each disbursement to the Borrower, until the Loan is repaid by the Borrower. Principal, together with interest thereon, is due and payable in annual installments as specified in the Estimated Amortization Schedule, attached hereto as Exhibit B, and as amended in the Final Amortization Schedule, beginning on [June 22nd OR December 22nd] of the fiscal year following the year in which the Project is completed and continuing thereafter on each [June 22nd OR December 22nd] until said principal and interest shall be paid in full. The Final Amortization Schedule, and any amended Final Amortization Schedule(s) are not attached but are expressly incorporated by reference herein.
2. Payment of any scheduled installment received within thirty (30) days after its due date shall be considered to have been received on its due date and shall be first applied to accrued interest from the date of disbursement to the Borrower and the balance, if any, to principal. Payment of any scheduled installment received more than thirty (30) days after its due date but before the next billing shall be considered late, and interest on the unpaid principal shall accrue from date of disbursement to the Borrower through the actual payment date. However, payment of any scheduled installment received after a subsequent billing shall be considered overdue, and interest shall accrue on the unpaid principal from date of disbursement to the Borrower through the subsequent billing due date or actual payment date, whichever is later.
3. The Borrower may prepay this Promissory Note in full or in part, without penalty. Any partial prepayment will not excuse any later scheduled payments until the Loan is paid in full. Prepayments shall be applied first to the payment of any outstanding late fees, then to interest and then to principal installments.

4. If any installment is not paid within thirty (30) days after its due date, the Energy Commission, at its option, may require the Borrower to pay a late charge equal to five percent (5%) of the amount of the installment or five dollars (\$5.00), whichever is greater.
5. On the occurrence of any event of default, as defined in paragraph 6 of this Promissory Note, the Energy Commission, at its sole election, may take any or all of the following actions:
 - A. Declare all or any portion of the principal balance, along with accrued interest and late fees, under this Promissory Note to be immediately due and payable and may proceed to enforce this Promissory Note, upon the expiration of not less than thirty (30) days after the date written notice of the Energy Commission's decision to accelerate is sent to Borrower. All amounts due after acceleration shall bear interest at the rate of ten percent (10%) per annum. The Energy Commission may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance.
 - B. Request that any Letter of Credit given as a condition of the Loan be honored by the issuing financial institution, upon presentment of a draft by the Energy Commission for payment to the issuing financial institution pursuant to the terms of the Letter of Credit.
 - C. Exercise its rights to obtain proceeds of any Certificate of Deposit pledged by Borrower to the Energy Commission as collateral for the Loan under a Security Agreement and Assignment of Certificate of Deposit.
 - D. Exercise all rights and remedies accorded to a secured party by the California Commercial Code or other applicable state or federal law.
 - E. Require Borrower to take any and all action necessary to make the Letter of Credit or Certificate of Deposit available to the Energy Commission as the Secured Party.
 - F. Exercise all of its rights and remedies enumerated herein, which rights are in addition to and not in limitation of any other rights the Energy Commission may have under the Loan Documents and applicable law.
6. Each of the following events and conditions shall constitute an event of default under this Promissory Note and the Loan Documents:
 - A. Failure of the Borrower to repay any principal, accrued interest, and late fees, if applicable, when due under the terms of this Promissory Note.

- B. Failure of the Borrower to comply with, and satisfy, all the terms, conditions, and obligations, required by the Loan Agreement and the Loan Documents as a condition for this Loan.
- C. Termination of the Loan Agreement pursuant to the terms thereof or breach by the Borrower of any terms or conditions of said Loan Agreement or the Loan Documents.
- D. Failure of the Borrower to undertake in a timely manner the express and implied activities for which the Loan Agreement and Loan Documents have been executed, including failure of Borrower to make progress toward completion within two years after the Effective Date of the Loan Agreement.
- E. If Borrower has provided a Letter of Credit, failure of the Borrower to provide a new/renewed Letter of Credit acceptable to the Energy Commission at least 60 days before expiration of an existing Letter of Credit.
- F. If Borrower has provided a Certificate of Deposit, the amount of any Certificate of Deposit pledged as Collateral, including earned interest and any prepayment penalty, becomes insufficient to cover the outstanding unpaid principal balance of the Loan, along with accrued interest and any late fees.
- G. If Borrower has provided a Certificate of Deposit and the issuing bank is holding the Certificate of Deposit, Borrower or anyone cashes, redeems, or attempts to cash or redeem, the Certificate of Deposit without the Energy Commission's written approval and release before the Loan has been paid in full.
- H. If Borrower has provided a Certificate of Deposit with a term less than that required for repayment in full of the Loan, Borrower fails to obtain a new or a renewed Certificate of Deposit acceptable to the Energy Commission at least 60 days before expiration or maturity of an existing Certificate of Deposit.
- I. Borrower transfers or attempts to transfer all or a substantial interest in the Letter of Credit or Certificate of Deposit, as applicable.
- J. Failure of the Borrower to obtain prior written Energy Commission approval before undertaking a change in the scope of the activities for which said Loan Agreement has been executed, and/or using funds disbursed under the Loan Agreement and the Loan Documents for purposes and in amounts not authorized for the Project.
- K. Failure of the Borrower to obtain and maintain insurance, as required by the Loan Agreement.
- L. Occurrence of: (1) the Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a

general assignment for the benefit of or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower; (3) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law, or any jurisdiction being authorized or instituted against the Borrower; or (4) the Borrower ceases operations, is dissolved, or terminates its existence.

- M. Discovery of any false or misleading statement, warranty, representation, or fact, whether or not contained in the loan application and/or other Loan Documents, that when made or furnished to the Energy Commission by or on behalf of the Borrower was relied upon by the Energy Commission and induced it to extend credit to Borrower.
7. No delay or failure of the Energy Commission in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Energy Commission shall be deemed a waiver of any such right or remedy.
8. Any notice required to be given to the Borrower hereunder shall be sent to the address shown on the Loan Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Promissory Note.
9. Borrower agrees to pay all costs and expenses, including reasonable attorney fees, which may be incurred by the Energy Commission in the enforcement and defense of the Loan Documents, including such costs and expenses incurred in any appeal.
10. This Promissory Note shall be binding upon the Borrower and its permitted successors and assigns and upon the Energy Commission and its permitted successors and assigns. Without the written consent of the Energy Commission, this Promissory Note is not assignable or transferable by Borrower either in whole or in part. The Energy Commission may assign its rights under this Promissory Note for security purposes, and in such event the assignee of this Promissory Note shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Promissory Note.
11. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.

BORROWER

PRINTED NAME OF AUTHORIZED
REPRESENTATIVE

AUTHORIZED SIGNATURE

TITLE

DATE

EXHIBIT B

ESTIMATED AMORTIZATION SCHEDULE

EXHIBIT C
WORK STATEMENT

EXHIBIT D

BUDGET

NOTE: This Document is used only for Borrowers Providing a Letter of Credit.

CALIFORNIA ENERGY COMMISSION

ENERGY EFFICIENCY AND RENEWABLE GENERATION EMERGING TECHNOLOGIES

AGRICULTURE AND FOOD INDUSTRIES LOAN PROGRAM

IRREVOCABLE STANDBY LETTER OF CREDIT

TO: State Energy Resources Conservation and Development Commission
Grants and Loans Office
1516 Ninth Street, MS-1
Sacramento, CA 95814

ISSUER

State Energy Resources Conservation
and Development Commission
BENEFICIARY

APPLICANT (BORROWER)

AMOUNT

LETTER OF CREDIT NUMBER

ISSUE DATE

EXPIRATION DATE

LETTER OF CREDIT: Issuer establishes and issues this irrevocable standby letter of credit (“Letter of Credit”) in favor of Beneficiary in the amount indicated above. Beneficiary may draw on this Letter of Credit with a Draft or Drafts together with the documents described below. The Letter of Credit is payable within three (3) business days after presentation to Issuer of demand for payment. This Letter of Credit is irrevocable and non-transferable.

DRAWINGS: Partial drawings are permitted without limitation as to the maximum number of drawings that may be made up to the amount of this Letter of Credit. The presentation of any Draft shall reduce the amount available under this Letter of Credit by the amount of the Draft.

Each Draft must be presented at Issuer's address on or before the Expiration Date. Issuer will honor all Drafts presented in compliance with the provisions of this Letter of Credit on or before the Expiration Date, including any renewals, amendments or extensions of the Expiration Date, and deposit of the amount of the Draft will be made in accordance with Beneficiary's instructions. Payment of any amount under this Letter of Credit by Issuer shall be made as directed by Beneficiary by wire transfer for deposit to an account of the State Energy Resources Conservation and Development Commission.

This Letter of Credit sets forth in full the terms of the Issuer's obligation to Beneficiary. This obligation cannot be modified by any reference in this Letter of Credit, or any document to which this Letter of Credit may be related.

DOCUMENTS: Each Draft must be accompanied by the following:

1. The original Letter of Credit, together with any renewals, amendments or extensions; and
2. A Draft drawn by Beneficiary on Issuer and signed by the Executive Director of the State Energy Resources Conservation and Development Commission or designee for the amount of the drawing requested under this Letter of Credit, and marked as follows: "Drawn under ____ [Issuer Name] Letter of Credit No. ____ [Letter of Credit number] dated ____ [Letter of Credit issue date]; and
3. A Beneficiary Statement signed by the Executive Director of the State Energy Resources Conservation and Development Commission, or designee, that ____ [Applicant/Borrower] has failed to perform its obligations to Beneficiary under the terms and conditions of a Loan Agreement and Promissory Note dated ____, and therefore is in breach of and/or is in default under said Loan Agreement or Promissory Note.

EXPIRATION DATE: This Letter of Credit is valid until and expires at the close of business at Issuer's address at ____ A.M./P.M. on ____, 200__. Issuer agrees to honor all Drafts presented in strict compliance with the provisions of this Letter of Credit on or before the Expiration Date or any renewal, amendment or extension thereof. If Beneficiary has not drawn the full amount of this Letter of Credit prior to the Expiration Date, the Expiration Date shall automatically be extended for a one (1) year period upon such Expiration Date or each successive anniversary of such date, unless Issuer notifies Beneficiary in writing, sent by registered mail or overnight delivery, at least sixty (60) days prior to the Expiration Date that Issuer elects not to extend this Letter of Credit for such additional period. In the event Beneficiary is notified of Issuer's election not to renew the Letter of Credit, any unused portion thereof shall be available and honored for payment upon Beneficiary's presentation to Issuer of a Draft on or before the then current Expiration Date.

MISCELLANEOUS PROVISIONS: Except as herein provided, this Letter of Credit is not subject to any condition or qualification and is the Issuer's individual obligation that is in no way contingent upon reimbursement. This Letter of Credit is subject to the current version of the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 ("UCP"), or any later version or amendment in force at the date this Letter of Credit is issued. This Letter of Credit shall also be governed by the laws of the State of California and the United States of America, so long as such laws are not inconsistent with the UCP. If legal proceedings are initiated by any party with respect to payment of the Letter of Credit, Issuer agrees that such proceedings shall be governed by California law and subject to the jurisdiction of California courts with venue in Sacramento County.

NAME OF ISSUING FINANCIAL INSTITUTION

ADDRESS

PRINTED NAME OF AUTHORIZED
SIGNATURE

AUTHORIZED SIGNATURE

TITLE

DATE

NOTE: This Agreement is used only for Borrowers Providing a Certificate of Deposit.

CALIFORNIA ENERGY COMMISSION
ENERGY EFFICIENCY AND RENEWABLE GENERATION EMERGING TECHNOLOGIES
AGRICULTURE AND FOOD INDUSTRIES LOAN PROGRAM
SECURITY AGREEMENT AND ASSIGNMENT OF CERTIFICATE OF DEPOSIT

NAME OF DEBTOR: _____

LOAN NUMBER: _____

FINANCIAL INSTITUTION: _____

CERTIFICATE OF DEPOSIT NUMBER: _____

AMOUNT OF ASSIGNMENT: _____

_____ (“Debtor”), and the State Energy Resources Conservation and Development Commission (“Secured Party”) agree as follows:

1. BACKGROUND AND PURPOSE

- A. Debtor has executed a Promissory Note (Exhibit A of Loan Agreement, Loan Number _____) payable to Secured Party in the original principal amount of _____ Dollars (\$_____) (“Promissory Note”). The Loan Agreement, Promissory Note, Work Statement, Budget, as well as this Security Agreement and Assignment of Certificate of Deposit (“Security Agreement”), together are referred to as the Loan Documents (“Loan Documents”).
- B. To secure Debtor’s obligations under the Promissory Note and Debtor’s obligations under this Security Agreement, Debtor has agreed to grant Secured Party a security interest as provided below.

2. EFFECTIVE DATE OF AGREEMENT

This Security Agreement shall become effective on the date it is executed and approved by Secured Party in Sacramento, California (the “Effective Date”).

3. GRANT OF SECURITY INTEREST

To secure Debtor’s Obligations (as defined below), Debtor grants to Secured Party a continuing first priority security interest in all of its right, title and interest in, to and under the Collateral described hereinafter.

4. OBLIGATIONS

For purposes of this Security Agreement, "Obligations" means any and all debts, obligations, and liabilities of Debtor to Secured Party arising out of, or relating in any way to the Promissory Note, Loan Agreement and other Loan Documents, and any obligations of Debtor to Secured Party pursuant to this Security Agreement, whether existing or arising after the Effective Date; whether voluntary or involuntary; whether jointly owned with others; whether direct or indirect; or whether absolute or contingent; and whether or not from time to time increased, decreased, extinguished, created, or incurred.

5. COLLATERAL

"Collateral" means all of Debtor's right, title and interest in a certificate of deposit in the amount of \$ _____, including earned interest, from _____, a nationally or state chartered, FDIC-insured financial institution ("Certificate of Deposit"). Debtor represents and warrants to Secured Party that such Certificate of Deposit is true and genuine and that Debtor is the sole owner of the Certificate of Deposit. Debtor represents that no other person or entity has any rights in the Collateral that have priority over the rights assigned pursuant to this Security Agreement. Debtor represents that no part of the Collateral is exempt or protected by law from this Security Agreement. If applicable, no joint owner, beneficiary, surviving spouse or representative of Debtor's estate gets any rights in the Collateral in the event of Debtor's death or incapacity until the Obligations are paid in full. Debtor shall deliver a true and correct copy of this Security Agreement to the financial institution issuing such Certificate of Deposit, and obtain for Secured Party an acknowledgement by the financial institution of its receipt of the Security Agreement and its agreement to hold a copy of this Security Agreement with the Certificate of Deposit to evidence the Commission's rights and priority interest in the Collateral. In the event Debtor and Secured Party consent in writing to any amendment or alteration of the terms of this Security Agreement, Debtor shall obtain an acknowledgement by the financial institution of its receipt of the amended Security Agreement, and agreement of the financial institution to hold the amended agreement the same as the original.

6. ASSIGNMENT

For value received, Debtor assigns and transfers to Secured Party all of its rights, title, and interest in the Certificate of Deposit, including all renewals or substitutions, pledged as security for the Obligations. Debtor authorizes the financial institution to release all information relating to this account to Secured Party. Debtor shall direct the financial institution to maintain the account on behalf of, and for the exclusive benefit of, Secured Party. Debtor specifically requests and directs the financial institution to honor and

accept this Security Agreement as evidence of Secured Party's priority interest in the Collateral, and to maintain the account in accordance with its terms and conditions.

7. WITHDRAWALS

Debtor shall request and direct the financial institution to provide no less than five days notice to Secured Party prior to honoring instructions to release or withdraw funds from, or to cash out or redeem, the Certificate of Deposit. Debtor shall ensure that the financial institution will not release or permit withdrawal of funds from the Certificate of Deposit that would reduce the cash balance below \$_____, without prior written consent from Secured Party. In the event of default under the Promissory Note, Secured Party shall have the right to withdraw all or any part of the Collateral and apply the withdrawal toward payment of the Obligations, even if such withdrawal results in a penalty. If the Obligations are in default, Secured Party can exercise this right without notice to Debtor. Debtor agrees to appoint Secured Party as its attorney in fact to redeem or cash out the Certificate of Deposit in the event of default under the Loan Documents.

8. TERMINATION

This Security Agreement shall not terminate until Debtor's Obligations are paid in full, at which time Debtor may request Secured Party to release this Security Agreement given as Collateral for the Loan. Upon such request, Secured Party will deliver a release to the financial institution holding the Collateral within ten business days of receipt by Secured Party of the Debtor's written request.

IN WITNESS WHEREOF, this Security Agreement and Assignment of Certificate of Deposit has been executed by the parties hereto.

SECURED PARTY:

DEBTOR (If other than individual,
then state whether a corporation, partnership,
etc.)

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION

NAME OF DEBTOR

1516 Ninth Street, MS-1

Sacramento, CA 95814
ADDRESS

ADDRESS

John P. Butler II
PRINTED NAME OF AUTHORIZED
SIGNATURE

PRINTED NAME OF AUTHORIZED
SIGNATURE

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Staff Services Manager I
TITLE

TITLE

DATE

DATE

NOTICE AND DIRECTION TO FINANCIAL INSTITUTION ISSUING AND HOLDING
CERTIFICATE OF DEPOSIT:

Debtor specifically requests and directs the financial institution to honor and accept this Security Agreement and Assignment of Certificate of Deposit ("Security Agreement") and its terms. Please take notice of this Security Agreement and confirm your receipt of this notice and your acceptance of its terms by completing the acknowledgement below and returning a copy to the Secured Party at:

California Energy Commission
Grants and Loans Office
1516 Ninth Street, MS-1
Sacramento, CA 95814

ACKNOWLEDGEMENT OF ASSIGNMENT BY FINANCIAL INSTITUTION:

The financial institution named below acknowledges receipt of Secured Party's notice and the Security Agreement by Debtor to Secured Party, dated _____, given by Debtor to secure its Obligations to Secured Party under that Loan Agreement and Promissory Note dated _____ (a copy of the Loan Agreement and Promissory Note is not being provided). We agree that no account holder or any other person (other than Secured Party) has any right to make any withdrawals from the Collateral until this Agreement is released in writing by Secured Party.

The financial institution holding the Certificate of Deposit given by Debtor as Collateral for its Obligations under the Loan Agreement and Promissory Note shall also hold a copy of this Security Agreement with the Certificate of Deposit to evidence the Secured Party's priority interest in the Collateral.

NAME OF FINANCIAL INSTITUTION

PRINTED NAME OF AUTHORIZED
SIGNATURE

AUTHORIZED SIGNATURE

TITLE

DATE